

REMARKS

Claims 1, 5, and 7-10 remain pending after entry of this response. The claims have been amended to more clearly recite the invention. Claims 2-4 and 6 have been canceled. No new matter has been added.

Claims 4 and 9 have been rejected under 35 U.S.C. 112 as being indefinite. Claim 4 has been canceled in this response. Claim 9 has been amended to recite that the heating pad is shaped to define at least a portion of an insole in the article. It is respectfully submitted that claim 9 is definite. Reconsideration and withdrawal of the §112 rejection is requested.

Claims 1-2, 4-6, and 8-10 have been rejected as being anticipated by either U.S. Pat. No. 90197 (Rogers) or US. Pat. No. 5,357,693 (Owens). Additionally, claim 7 has been rejected as being unpatentable over either Rogers or Owens. Claim 3 has been rejected as being unpatentable over Rogers in view of either U.S. Pat. No. 2,205,091 (Geffner) or U.S. Pat. No. 2,430,338 (Heiman).

Claims 1 and 9 have been amended to recite that solid microwaveable heating pad is solid and dimensioned to fit into the pocket, that the upper portion and the sole portion is detachable along at least a portion of a circumference of the article to allow access to the pocket for insertion and removable of the microwaveable heating pad. Also, the upper portion and the sole portion are connected by means of a detachable fastener such as a zip. These features were previously presented in claims 2, 3 and 6 of the application as filed. These claims relate to part of the sole and the upper being mutually detachable by means of a zip to allow the insertion of a solid microwavable heating pad into the pocket defined therebetween.

The Examiner cites US 90,197 (Rogers) as anticipating claim 1 of the application. The applicant submits that, while Rogers discloses the general concept of heating a shoe by the insertions of a heated block into a shoe or a boot, it makes no reference to the use of a microwaveable pad. Indeed, at the time of filing of Rogers, 1869, microwaves were yet to be discovered. Further, Rogers does not disclose the use of a zip to enclose a pocket into which the microwaveable pad is inserted in order to heat the sole of the footwear. These features are neither disclosed nor suggested by Rogers.

Accordingly, Applicant submits that claims 1 and 9, as amended, are novel and also non-obvious over Rogers.

Turning now to the Examiner's rejection in relation to US 5,357,693, the Owen reference does not disclose the use of a solid microwaveable pad. Rather, Owens discloses the use of a liquid containing vacuum sealed microwaveable envelope. Such an envelope is prone to leakage and can lead to scalding in the event it does leak. Owens attempts to overcome this problem by the use of an absorbent overlayer to capture any leakage from the envelope. Thus, Owens does not teach the use of a solid pad, and actually specifically teaches away from the use of a solid pad by the inclusion of the absorbent overlayer.

Further, Owens does not teach this insertion of the envelope into a pocket formed between the sole and the upper of the shoe. Rather, it teaches the insertion of the envelope into the upper, see for example Figure 23. In addition to which Owens does not disclose the use of a zip retaining the heating pad within a pocket formed between the sole and the upper of the shoe.

Based on the foregoing, Applicant submits that claims 1 and 9, as amended, are novel and non-obvious over Owens.

Applicant submits that claims 1 and 9, as amended, are also patentable over Rogers combined with either Geffner or Heimar for the following reasons.

As noted above, Rogers does not disclose the use of a microwave in the heating of the pad inserted into the pocket defined by the zipper of the present claims 1 and 9. Additionally, Rogers does not disclose the use of a zipper to define such a pocket.

Geffner and Heimar both disclose the use of a zipper for the attachment of an upper to a sole of a shoe. However, neither Geffner nor Heimar are concerned with the provisions of heating pads between the upper and the sole of the shoe. Rather, both Heimar and Geffner are concerned with increasing the ease of swapping of upper of a sole between uppers, or vice-versa. Indeed, Heimar does not even disclose the provision of a pocket between the sole and the upper of the shoe. Geffner teaches the provision of a permanent arched support within the sole, not a removable insert in a pocket defined between.

Thus, Applicant submits that nothing in the teaching of Owens in combination with either Heimar or Geffner, would suggest to a man of ordinary skills in the art the provision of a pocket for receiving a solid microwaveable pad formed from a zipped interstitial space between the sole and the upper of the shoe.

Accordingly, based on the foregoing, it is respectfully submitted that claims 1 and 9 are patentable over the prior art of record. Claims 5, 7 and 8 depend from claim 1 and are also patentable for all the reasons noted above. Claim 10 recites the apparatus claim 1 and is also, therefore, patentable for all the foregoing reasons.

If the Examiner believes that direct communication with the Applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

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